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In the Supreme Court of the United States

OCTOBER TERM, 1949

UNITED STATES OF AMERICA, APPELLANT

v.

SHORELINE COOPERATIVE APARTMENTS, INC., A CORPORATION; J. M. NICHOLSON; ROBERT R. LUMSDEN; NATHAN SUCHERMAN; MILTON TIRSLEY; FRANK FERRARO; HELEN FERRARO; JOHN J. CHALMERS; SAMUEL SILVERMAN; ARTHUR J. CASEY; MAURICE LIPKIN; CHARLES E. KOCH; CHARLES H. BRANDT; CLIFFORD CULLODEN; JEROME A. CUTLER; HARRY TARLER; EUGENE B. FEINGOLD; HERBERT S. KOHN AND IRVING KALLICK

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

BRIEF FOR THE PETITIONER

OPINION BELOW

The opinion of the District Court (R. 9) has been reported in 84 F. Supp. 660.

JURISDICTION

The judgment of the District Court was entered July 26, 1949 (R. 19). The petition for appeal was

filed on August 23, 1949, and the appeal was allowed on August 23, 1949 (R. 21). Probable jurisdiction was noted by this Court on October 17, 1949. The jurisdiction of this Court is conferred by Section 1252 of Title 28 of the United States Code (Act of June 25, 1948, c. 646, 62 Stat. 928, 28 U.S.C. 1252).

QUESTIONS PRESENTED

The primary questions presented are:

1. Whether the "local option" provisions of Section 204(j) of the Housing and Rent Act, as amended in 1949, unconstitutionally delegate the legislative power of Congress to state and local officials.

2. Whether Section 204(j) is separable from the remainder of the Act.

Appellees are also urging, by way of defense, additional constitutional objections to the statute, of which the principal are:

3. Whether the Housing and Rent Act of 1949 is a constitutional exercise of the war powers of Congress or a violation of the Tenth Amendment.

4. Whether the statute violates the Fifth Amendment for a variety of reasons.

5. Whether the statute contains an invalid delegation to the Housing Expediter.

STATUTE AND REGULATION INVOLVED

Section 204(j) of the Housing and Rent Act of 1949, Public Law 31, 81st Cong., 1st sess., March 30, 1949, the statutory provision principally involved in this case, is printed at pp. 4-5, *infra*. Printed

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copies of the entire statute are attached at the end of this brief.

The Housing and Rent Act of 1947, 61 Stat. 193, 50 U.S.C. App., Supp. II, 1881 *et seq.*, was enacted on June 30, 1947, and became effective July 1, 1947. The 1947 Act was amended and extended by the Housing and Rent Act of 1948, Public Law 464, 80th Cong., 2d sess., March 30, 1948, and by the Housing and Rent Act of 1949. The Act, as amended, expires on June 30, 1950.

The Housing and Rent Act of 1947 fixed maximum rents in those areas which on March 1, 1947, were under rent control pursuant to the Emergency Price Control Act of 1942 (50 U.S.C. App. 901, *et seq.*). Such rents were those in effect on June 30, 1947, and the Act forbade the demand for or receipt of rents in excess thereof (Sec. 204(b)). Local Rent Advisory Boards were provided which could recommend decontrol to the Housing Expediter, and the Housing Expediter was authorized on his own initiative to remove controls when the demand for housing accommodations was sufficiently met (Sec. 204(c), (e)). Specific grounds for eviction were prescribed (Sec. 209).

The 1948 Act gave Local Advisory Boards greater authority and provided for appeals to the Emergency Court of Appeals from disapproval by the Housing Expediter of their recommendations for decontrol (Sec. 204(c), (e)). The 1949 Act amplified the field of action of the Local Advisory Boards, and added Section 204(j), contain-

ing "local option" provisions for decontrol. Section 204(j) provides for a termination of federal rent control under the following conditions:

> (1) Whenever the governor of any State advises the Housing Expediter that the legislature of such State has adequately provided for the establishment and maintenance of maximum rents, or has specifically expressed its intent that State rent control shall be in lieu of Federal rent control, with respect to housing accommodations within defense-rental areas in such State and of the date on which such State rent control will become effective, the Housing Expediter shall immediately make public announcement to the effect that he has been so advised. At the same time all rent controls under this Act, as amended, with respect to housing accommodations within such State shall be terminated as of the date on which State rent control is to become effective. As used in this subsection, the term "State" means any State, Territory, or possession of the United States.
>
> (2) If any State by law declares that Federal rent control is no longer necessary in such State or any part thereof and notifies the Housing Expediter of that fact, the Housing Expediter shall immediately make public announcement to the effect that he has been so advised. At the same time all rent controls under this act, as amended, with respect to housing accommodations within such State or part thereof shall be terminated on the fifteenth day after receipt of such advice. As

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used in this subsection, the term "State" means any State, Territory, or possession of the United States.

(3) The Housing Expediter shall terminate the provisions of this title in any incorporated city, town or village upon receipt of a resolution of its governing body adopted for that purpose in accordance with applicable local law and based upon a finding by such governing body reached as the result of a public hearing held after 10 days' notice, that there no longer exists such a shortage in rental housing accommodations as to require rent control in such city, town or village: *Provided, however,* That such resolution is first approved by the Governor of the State before being transmitted to the Housing Expediter: *And provided further,* That where a major portion of a defense-rental area has been decontrolled pursuant to this paragraph (3), the Housing Expediter shall decontrol any unincorporated locality in the remainder of such area.

The 1949 Act also contains a separability section —reading as follows:

Sec. 303. If any provision of this Act or the application of such provision to any person or circumstances shall be held invalid, the validity of the remainder of the Act, and the applicability of such provision to other persons or circumstances, shall not be affected thereby.

Suits under the 1949 Act were to be brought in the name of the United States of America (Sec.

206(b)). Specific grounds for eviction were no longer set forth in the Act, but were to be established by the Housing Expediter by appropriate regulation (Sec. 209). Pursuant to the Act the Housing Expediter issued Rent Regulations (14 F. R. 1571, as amended 5711), which require a landlord to apply to the Area Rent Office for a certificate of occupancy where he seeks to evict tenants for purposes of selling the housing accommodations.

STATEMENT

Section 209(a)(2) of the Housing and Rent Act before the 1949 amendments made it unlawful, upon the sale of housing accommodations to a co-operative, to evict any tenants in the housing accommodations involved unless there was a participation of 65% of the tenants in occupancy in the co-operative.[1] The present action was instituted by the Housing Expediter to enjoin the defendant, Shoreline Cooperative Apartments, Inc., from violating this provision of the Act by evicting tenants of a cooperatively owned apartment house when less than 65% of the stockholders were tenants in

[1] ". . . *Provided*, That in the case of housing accommodations in a structure or premises owned or leased by a cooperative corporation or association no action or proceeding under this paragraph or paragraph (3) to recover possession of any such housing accommodations shall be maintained unless stock in the cooperative corporation or association has been purchased by persons who are then stockholder tenants in occupancy of at least 65 per centum of the dwelling units in the structure or premises and are entitled by reason of stock ownership to proprietary leases of dwelling units in the structure or premises;" [Sec. 209(a)(2) P. L. 464, 80th Cong., 2d sess.]

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occupancy. The other defendants were purchasers of stock who desired possession of the apartments (R. 5). While the suit was pending, the 1949 Act was adopted, effective April 1, 1949. A supplemental complaint was filed substituting the United States as plaintiff, and seeking to enjoin violations of Section 209 of the amended Act and the Regulations issued pursuant thereto which, insofar as pertinent here, continued in effect the substance of the provisions of the 1948 statute [2] (R. 1-7). The defendants filed motions to dismiss the complaint on the grounds that the complaint failed to state a cause of action upon which relief could be granted, and that Section 209 was void because it violated the constitutional rights of the defendants (R. 8-9).

The District Court dismissed the complaint, holding that Section 204(j) of the Housing and Rent Act of 1949 (which was not directly involved

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[2] The pertinent provision of the regulation provides (14 F.R. 5711, 5720):

> In the case of housing accommodations in a structure or premises owned by a cooperative corporation or association, no certificate shall be issued by the Expediter to a purchaser of stock or other evidence of interest in such cooperative, who is entitled by reason of such ownership of stock or other evidence of interest to possession of such housing accommodations by virtue of a proprietary lease or otherwise, unless stock or other evidence of interest in the cooperative has been purchased by persons who are tenants in occupancy of at least 65 percent of the housing accommodations in the structure or premises and are entitled by reason of such ownership to proprietary leases of housing accommodations in the structure or premises; [Section 825.6(c)(1)(b), issued September 1, 1949].

in this case) was an unconstitutional delegation of power by Congress, and that since Congress would not have passed the 1949 Act without Section 204(j), the separability clause (Sec. 303 of the 1949 Act), was ineffective to justify the operation of the Act without Section 204(j). The entire Act was thus held unconstitutional (R. 9-18).

SUMMARY OF ARGUMENT

I

A. Section 204(j) of the Housing and Rent Act of 1949 does not contain an invalid delegation of federal legislative power to state offices. In the first place, the standards contained in the three paragraphs of Section 204(j) are sufficiently definite and intelligible. In the main they require a finding that rent control is no longer necessary in a particular area, not substantially different from that sustained by this Court in *Woods* v. *Miller Co.*, 333 U. S. 138. The provision in the first paragraph for substitution of state for federal rent control provides an intelligible guide to the content of the state statute which is to replace the federal. But this provision is constitutional apart from the doctrine of delegation. It constitutes a relinquishment to the states of authority over a subject over which they have at least concurrent power, and thus is clearly valid under the principle of *Prudential Insurance Co.* v. *Benjamin*, 328 U. S. 408.

B. 1. The fact that the delegation is to state and local officials does not render it unconstitutional.

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Since the beginning of the Government, Congress has frequently relied upon state legislative, judicial and administrative agencies in the administration of federal statutes. These examples of intergovernmental cooperation have uniformly been upheld. See especially *United States* v. *Jones,* 109 U. S. 513, 519; *Amy* v. *Watertown (No. 1),* 130 U. S. 301, 303-304; *Butte City Water Co.* v. *Baker,* 196 U. S. 119. In recent years, this Court has upheld statutes which provide that certain administrative orders should become effective only after approval by two-thirds of the persons who would be subjected to them. *Currin* v. *Wallace,* 306 U. S. 1, 15-16; *United States* v. *Rock Royal Co-Op.,* 307 U. S. 533, 577-578. Congress must have as much power to entrust a determination upon which depends the operation of a federal scheme to the vote of responsible elected officials of a state or locality as to the vote of interested private citizens.

2. The principle underlying the cases sustaining various types of delegations to state and local officials transcends the doctrine of delegation. In a federated system such as ours, cooperative adjustments between state and federal governments are to be favored. This is particularly true in a situation like that at bar, in which Congress is seeking in a responsible fashion gradually to return to the states control over a subject which Congress is regulating under its emergency war powers. In dealing with such a problem it was clearly rea-

sonable, and not unconstitutional, for Congress to rely upon the state and local officials to determine the needs of the local communities, and to permit the substitution of state for federal rent control when an adequate state statute was enacted.

II

Even if Section 204(j) were unconstitutional, the remainder of the Housing and Rent Act would not fall. The invalidity of parts of a law will not affect the remainder if the valid provisions are capable of being given legal effect standing alone, and if the legislature would have intended them to stand with the invalid provisions stricken. *Electric Bond & Share Co.* v. *Securities and Exchange Commission,* 303 U. S. 419. Here unquestionably, the remainder of the Housing and Rent Act can operate effectively without Section 204(j). The statute contains a variety of other decontrol and termination clauses. The intention of Congress that the statute shall be separable is explicitly stated in the separability clause. This establishes that the statute is not to be treated as "an integrated whole", and that "when validity is in question, divisibility and not integration is the guiding principle". *Electric Bond & Share* case, 303 U. S., at 434.

Nothing in the language or history of the Housing and Rent Act establishes that Congress had an intention contrary to that expressed in the separa-

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bility clause. The most that can be said is that a number of members of Congress who voted for the bill might not have done so in the absence of Section 204(j), and that conceivably this group, combined with those who opposed Section 204(j) but otherwise favored the bill, were necessary to constitute a majority. But this does not mean that a majority of Congress would wish the statute to fall as a whole if Section 204(j) were found to be unconstitutional.

III

Other constitutional objections raised by appellees in which it is contended that the Act is not warranted under the war powers, that the Act violates the Due Process Clause in various ways, and that it contains an unconstitutional delegation to the Housing Expediter are clearly lacking in merit.

IV

The case is not moot by reason of appellees' claim, that 65% of the tenants in occupancy have now joined the cooperative. This is contested by the tenants sought to be evicted. The hearing and possible appeal before the administrative agency will take approximately four months before the final administrative decision is reached. If the statute is unconstitutional, appellees are entitled to evict the tenants immediately.

ARGUMENT

I

Section 204(j) Is Constitutional

Introductory Analysis

The decision below holding the Housing and Rent Act unconstitutional has already been rejected by six other district courts.[3] We shall show that the decision is in every respect in conflict with principles repeatedly affirmed by this Court—not only because Section 204(j) is constitutional, but because it is just as clearly severable from the remainder of the statute.

The court below treated the case as governed by the usual principles with respect to the delegation of legislative powers. Section 204(j), we submit, clearly satisfies these tests. But its validity should not depend upon the application of the delegation doctrine. Although in form a delegation, the section is in reality an answer to a practical problem in intergovernmental relations—how the United States should turn back to the States a subject

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[3] *United States* v. *Emery*, 85 F. Supp. 354 (S.D. Cal.); *United States* v. *Resch*, 85 F. Supp. 389 (W.D. Ky.); *United States* v. *Bize* (D. Neb.), No. 39-49, decided September 2, 1949; *United States* v. *Fireman* (N.D. Cal.), No. 28920-G, decided September 14, 1949; *United States* v. *Crenshaw* (D. Mont.), No. 444, decided September 28, 1949; *Shimek* v. *Woods* (D. D.C.) Civ. Action No. 3664-49, decided November 1, 1949 (three-judge court). Without specific reference to the *Shoreline* decision, on August 1, 1949, Judge Atwell in *United States* v. *Cox* (N.D. Tex.), No. 3687, overruled a motion to dismiss based upon the alleged invalidity of Section 204(j).

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which, apart from the war emergency, normally would be a matter for state rather than federal control. The consequences of the housing deficit resulting from the war (see *Woods* v. *Miller Co.*, 333 U. S. 138, 142-144) will not abate at an even pace throughout the nation. The need for continued federal control in any area will depend not only upon the re-creation of a balance between the supply and demand for housing, but also upon whether the state or local government is willing to undertake the function of rent control.

In *Woods* v. *Miller Co.* the Court refused to assume that Congress would not be "alert to its constitutional responsibilities" (p. 144) in determining when this exercise of the war powers should be terminated. Section 204(j) is one of the methods adopted by Congress in order to reconcile the national interest in not removing the wartime controls more swiftly than the facts justified with our constitutional structure by which such matters as rent regulation normally come within the field reserved to the states. The Section should be held valid if it is a reasonable method of dealing with this practical problem.

It would have been entirely lawful for Congress to have asserted that federal rent control should terminate in any area in which state controls were established. That would not be a delegation of federal legislative power to the states, but a withdrawal of federal control from a field in which the states have, at the least, concurrent authority.

Prudential Insurance Co. v. *Benjamin,* 328 U. S. 408, *In re Rahrer,* 140 U. S. 545, and *Whitfield* v. *Ohio,* 297 U. S. 431, uphold such a withdrawal of federal authority over interstate commerce, a field in which federal power is paramount. A relinquishment of power over rents to the States would seem even more clearly justifiable under our constitutional framework. That, in substance, is all that Section 204(j)(1), in particular, does.

But even if Section 204(j) is to be adjudged from the standpoint of delegation of power, it is unquestionably valid. It is neither unconstitutional by reason of inadequacy of its standards or because the delegation is to state rather than to federal officials.

A. The Standards Contained in Section 204(j) Are Adequate

In *Woods* v. *Miller Co.* this Court sustained the lawfulness of the delegation to the Housing Expediter of authority

> . . . to remove any or all maximum rents before this title ceases to be in effect, in any defense-rental area, if in his judgment the need for continuing maximum rents in such area no longer exists due to sufficient construction of new housing accommodations or when the demand for rental housing accommodations has been otherwise reasonably met. [333 U. S. at 141.]

The standard upheld in the *Miller* case is not distinguishable in substance or specificity from

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that contained in Section 204(j)(3) (quoted in full at page 5), which provides that the Housing Expediter shall terminate controls when local authorities, after public hearing and with the approval of the Governor, find that "there no longer exists such a shortage in rental housing accommodations as to require rent control in such city, town or village."

Section 204(j)(2) contains substantially the same standard, though in more general language. It provides for termination of control if a state "by law declares that Federal rent control is no longer necessary in such State or any part thereof." The phrase "no longer necessary", though more terse, obviously requires a judgment as to the relationship between adequacy of housing facilities and the demand therefor, and thus has substantially the same meaning as the provision upheld in the *Miller* case. The word "necessary" contains an intelligible guide to conduct when read in its statutory and factual context. The standard thus is at least as specific as others which this Court has upheld. *Lichter* v. *United States,* 334 U. S. 742, 786, and cases cited. See, especially, *American Power & Light Co.* v. *S.E.C.,* 329 U. S. 90, 104 ("unduly or *unnecessarily* complicate the structure"); *National Broadcasting Co.* v. *United States,* 319 U. S. 190, 225-226 ("public interest, convenience, or *necessity*"); *Radio Commission* v. *Nelson Bros. Co.,* 289 U. S. 266 (same); *Colorado* v. *United States,* 271 U. S. 153 ("public conveni-

ence and *necessity*"); *Chesapeake & Ohio Ry.* v. *United States*, 283 U. S. 35 (same); *New York Central Securities Corp.* v. *United States*, 287 U. S. 12 ("in the public interest"); *United States* v. *Chemical Foundation*, 272 U. S. 1 (same); *Avent* v. *United States*, 266 U. S. 127 (same).

Section 204(j)(1) differs from the two paragraphs just discussed in that it provides for the substitution of state for federal control instead of the termination of control altogether. We have already pointed out (pp. 13-14, *supra*) that this provision in particular is a relinquishment to the states of authority over a subject over which they have at least concurrent power rather than a delegation, and thus clearly valid under the principle of *Prudential Insurance Co.* v. *Benjamin*, 328 U. S. 408. But even as a delegation the paragraph is lawful. It provides:

> (1) Whenever the governor of any State advises the Housing Expediter that the legislature of such State *has adequately provided for the establishment and maintenance of maximum rents*, or has specifically expressed its intent that *State rent control shall be in lieu of Federal rent control*, with respect to housing accommodations within defense-rental areas in such State and of *the date on which such State rent control will become effective*, the Housing Expediter shall immediately make public announcement to the effect that he has been so advised. At the same time all rent controls under this Act, as amended, with respect to housing accommodations within

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such State shall be terminated *as of the date on which State rent control is to become effective.*" [Italics supplied.]

Certainly the first of the two alternative requirements—that the governor advise the Housing Expediter that the legislature "has adequately provided for the establishment and maintenance of maximum rents"—is a sufficient standard. The adjective "adequately" imports the same considerations as have been mentioned in relation to the word "necessity." Other words connoting a judgment as to a matter of degree have often been held to be sufficient. *Lichter* v. *United States,* 334 U. S. at 786 ("*excessive* profits"); *Sunshine Anthracite Coal Co.* v. *Adkins,* 310 U. S. 381, 397-398 ("fair return" or "*fair* value"); *Federal Power Commission* v. *Hope Gas Co.,* 320 U. S. 591, 600-601 ("just and reasonable rates"): *Tagg Bros. & Moorehead* v. *United States,* 280 U. S. 420 (same); cf. *Levy Leasing Co.* v. *Siegel,* 258 U. S. 242, 249-250.

The second alternative is a finding that the state legislature "has expressed its intent that State rent control shall be in lieu of Federal rent control." But it is not sufficient under the statute that the state legislature merely express its intention. For the governor must advise the Housing Expediter "of the date on which such State rent control will become effective", and the Federal control terminates only "as of the date on which State rent control is to become effective." The question of delegation is whether the words "State rent control" have a sufficiently definite meaning.

Clearly in the context of these provisions and of the statute as a whole, and particulaly in view of the statutory requirement that the state control "be in lieu of Federal rent control", there can be no doubt as to this. The "State rent control" contemplated was clearly some method of protecting the public against unduly high rents. Although the method need not in detail be the same as under the Federal plan, the subject is reasonably and intelligently defined in a manner which discloses what Congress intended. Cf. *Fahey* v. *Mallonee,* 332 U. S. 245, in which the word "conservator" in the context of the particular statute was found to import a sufficient standard.

B. The Reliance Upon State and Local Action Does Not Violate the Constitution

1. *Delegation to State Officers is not Unconstitutional.*

Since the beginning of the government Congress has delegated power to state legislatures, courts and administrative officials. The propriety of these statutes has seldom been challenged. The point was considered in *United States* v. *Jones,* 109 U. S. 513, where attack was made upon an act of Congress which delegated to a tribunal created under the laws of a state the power to fix and determine the amount of compensation to be paid by the United States for private property taken by the government in the exercise of its right of eminent domain. The Court there stated (109 U. S. at pp. 519-520):

Yet from the time of its establishment that

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> government has been in the habit of using, with the consent of the States, their officers, tribunals, and institutions as its agents. Their use has not been deemed violative of any principle or as in any manner derogating from the sovereign authority of the federal government; but as a matter of convenience and as tending to a great saving of expense.

As the above quotation states, the federal government has frequently availed itself of the aid of the legislative, judicial and executive arms of the state governments. This case is concerned primarily with the reliance by Congress upon state action in the legislative field.

A familiar and prominent example of Congressional reliance upon state legislative action is the Conformity Act, first enacted in 1789 (1 Stat. 93, R. S. § 914), which provided that the procedure in federal courts in suits at common law should be the same as in the courts of the state in which the federal courts sat. This meant that state legislatures or courts were empowered to enact laws or rules which would be controlling in federal courts. The validity of this "delegation"[4] has always been assumed. See *Wayman* v. *Southard*, 10 Wheat. 1, 39-40; *Amy* v. *Watertown (No. 1)*, 130 U. S. 301, 303-304. See, also, *Hanover National Bank* v. *Moyses*, 186 U. S. 181, in which the validity of the Bankruptcy Law of

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[4] The federal statute did not merely adopt the existing state laws and rules. The federal courts were bound to follow the state practice when embodied in laws enacted after the passage of the federal statute.

1898 was attacked as an attempt by Congress unlawfully to delegate its legislative power because of its recognition of exemptions and other exceptions provided by local laws. Finding no merit to this contention, this Court said (186 U. S. at 190):

> Nor can we perceive in the recognition of the local law in the matter of exemptions, dower, priority of payments, and the like, any attempt by Congress to unlawfully delegate its legislative power. *In re Rahrer, Petitioner,* 140 U. S. 545, 560.

A recent example of the same type of legislation is the Federal Tort Claims Act (28 U.S.C. 2674), which also makes state law applicable to tort claims against the United States.

In *Butte City Water Co.* v. *Baker,* 196 U. S. 119, the Supreme Court was concerned with a federal statute that provided both that the states might legislate with respect to mining claims on public land, and also that such regulations might be made by the miners themselves (pp. 122-123). This Court rejected the argument that there was an unlawful delegation to state legislatures, saying (pp. 125-126):

> It is insisted that the disposal of the public lands is an act of legislative power, and that it is not within the competency of a legislature to delegate to another body the exercise of its power; that Congress alone has the right to dispose of the public lands, and cannot transfer its authority to any state legis-

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lature or other body. The authority of Congress over the public lands is granted by section 3, article IV, of the Constitution, which provides that "the Congress shall have power to dispose of and make all needful rules and regulations respecting the Territory or other property belonging to the United States." In other words, Congress is the body to which is given the power to determine the conditions upon which the public lands shall be disposed of. That Nation is an owner, and has made Congress the principal agent to dispose of its property. Is it inconceivable that Congress, having regard to the interests of this owner, shall, after prescribing the main and substantial conditions of disposal, believe that those interests will be subserved if minor and subordinate regulations are entrusted to the inhabitants of the mining district or State in which the particular lands are situated? While the disposition of these lands is provided for by Congressional legislation, such legislation savors somewhat of mere rules prescribed by an owner of property for its disposal. It is not of a legislative character in the highest sense of the term, and as an owner may delegate to his principal agent the right to employ subordinates, giving to them a limited discretion, so it would seem that Congress might rightfully entrust to the local legislature the determination of minor matters respecting the disposal of these lands.

This passage emphasizes the unimportant nature of the authority to be exercised by state legis-

latures, since the statute in question contained no standards in the ordinary sense. But the opinion does not imply that the delegation is questionable because it is to a state legislative body. On the contrary, the Court affirmed (p. 127):

> Now, if Congress has power to delegate to a body of miners the making of additional regulations respecting location, it cannot be doubted that it has equal power to delegate similar authority to a state legislature.

Other cases upholding a federal statute whose operation depends upon existence of particular state laws are *Clark Distilling Co.* v. *Western Md. Ry. Co.*, 242 U. S. 311, 326-327, which sustained the Webb-Kenyon Act forbidding transportation of liquor into a state for use in violation of its laws, and *Kentucky Whip & Collar Co.* v. *Illinois Central R. Co.*, 299 U. S. 334, 352, upholding a similar law with respect to prison made goods. In each case the contention that the reliance upon state law as an ingredient of the federal offense was an invalid delegation of authority to the states was rejected. See, also, *in re Rahrer*, 140 U. S. 545. The Federal Hot Oil statute sustained in *Griswold* v. *President*, 82 F. 2d 1922 (C.A. 5), and the law prohibiting the interstate transportation of game killed in violation of state law (*Rupert* v. *United States*, 181 Fed. 87 (C.A. 8)), are of the same sort.

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Many cases have sustained the lawfulness of the use by the United States of state administrators and judicial officers in carrying out Federal laws. *United States* v. *Jones*, 109 U. S. 513, has already been mentioned. In *Parker* v. *Richard*, 250 U. S. 235, it was objected that it was improper for Congress to require a state probate court rather than a federal agency to approve certain Indian conveyances; this Court upheld the delegation, saying (p. 239):

> It is the agency selected by Congress and the authority confided to it is to be exercised in giving effect to the will of Congress in respect of a matter within its control. Thus in a practical sense the court in exercising that authority acts as a federal agency; and this is recognized by the Supreme Court of the State. *Marcy* v. *Board of Commissioners*, 45 Oklahoma 1. Plainly, the restrictions have the same force and operate in the same way as if Congress had selected another agency, exclusively federal, such as the Superintendent of the Five Civilized Tribes.

Other instances which have come before this Court include *Dallemagne* v. *Moisan*, 197 U. S. 169, 174, which involved the validity of Article 8 of the Consular Convention between the United States and France, a federal treaty, conferring power upon a state officer to enforce the criminal laws of a foreign government; *Holmgren* v. *United States*, 217 U. S. 509, state court jurisdiction and conduct in naturalization proceedings under Sec-

tion 2165 of the Revised Statutes of the United States; *Robertson* v. *Baldwin*, 165 U. S. 275, jurisdiction conferred upon local justices of the peace under Section 4598 of the Revised Statutes of the United States to arrest deserting seamen; *Gambino* v. *United States*, 275 U. S. 310, participation by municipal police in the enforcement of the National Prohibition Act. Familiar illustrations are the draft statutes in the Civil and First World Wars. *Selective Draft Law Cases*, 245 U. S. 366, 389; *Matter of Spangler*, 11 Mich. 298 (1863).

There are, in addition, many other examples of federal use of state officials which have never been contested.[5]

This Court has also in recent years upheld statutes which provide that certain administrative orders should become effective only after approval by farmers in a referendum vote (*Currin* v. *Wallace*, 306 U.S. 1, 15-16; *United States* v. *Rock Royal Co-op.*, 307 U.S. 533, 577-578) as against the contention that this was a delegation of authority to the farmers. These provisions were both negative and affirmative in form. The scheme before the Court in *Wickard* v. *Filburn*, 317 U.S. 111, 115-116, required the Secretary of Agriculture under cer-

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[5] See Koenig, *Federal and State Cooperation under the Constitution*, 36 Mich. L. R. 752, 772-781 (1938); Kauper, *Utilization of State Commissioners in the Administration of the Federal Motor Carrier Act*, 34 Mich. L. R. 37, 46-49 (1935); Mermin, *"Cooperative Federalism" Again: State and Municipal Legislation Penalizing Violation of Existing and Future Federal Requirements*, 57 Yale L. J. 1 (1947).

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tain circumstances to issue a proclamation that a marketing quota would be in effect, but to cancel it unless a two-thirds vote of the farmers in favor thereof was subsequently obtained. *Currin* v. *Wallace, supra,* justifies these provisions for farmers' approval on the ground that there is no delegation of legislative authority but an exercise of federal power subject to the factual condition that one-third of the farmers do not disapprove. The same analysis can be made here, that the federal statute is operative subject to the condition that the state officials had not made the determinations described in Section 204(j). Whether the matter is called a delegation or a condition, Congress must have as much power to entrust a determination upon which depends the operation of a federal scheme, to the vote of responsibly elected officials of a state or locality as to the vote of interested private citizens.[6] Cf. *In re Rahrer,* 140 U. S. 545, 561-562.

We think it clear from this review of various types of delegations to state and local officials, as well as to private citizens, that there is no constitutional doctrine that authority may only be delegated to federal administrative officers. Inasmuch as Congress has under Section 204(j) prescribed intelligible standards for the guidance of state authorities, Congress has no more abdicated its leg-

[6] A case sustaining a delegation to a private association is *St. Louis & Iron Mt. Ry.* v. *Taylor,* 210 U. S. 281, 287, which upheld a statute authorizing the American Railway Association to determine the standard height of drawbars for freight cars.

islative function than in the ordinary case of a delegation to a federal agency.

2. *Relinquishment of control of rents to the states is a method of inter-governmental accommodation favored under our federal system.*

As we have seen, the delegations to state and local officers have taken various forms, which differ in detail both from each other and from that in the Housing and Rent Act. But the delegation has always been held—or assumed—to be constitutional, though sometimes on the basis of reasoning that seems to deny that it was a delegation at all. The underlying principle, however, transcends the doctrine of delegation. In a federated system such as ours, cooperative adjustments between state and federal governments are eminently to be favored. Despite occasional difficulties in rationalization (see *Prudential Insurance Co.* v. *Benjamin,* 328 U.S. 408, 424), such adjustments have always been upheld.

There is a special reason why these principles should govern when Congress is acting in a reasonable fashion gradually to turn back to the states a subject which Congress has found it necessary to control under the war power in time of national emergency. Particularly is there good reason to do so here, since the control of rents normally falls within the police powers of the states, and the need for regulating the subject under the war powers of Congress is not to be regarded as permanent.

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The technique adopted by Congress in Section 204(j) is a method of gradually transferring the subject from federal to state control, as the necessity for federal regulation in the particular state or community diminishes. Unless there is no reasonable basis for the means chosen by Congress to terminate the control under the war powers, they cannot be held unconstitutional (*McCulloch* v. *Maryland*, 4 Wheat. 316, 409-410, 421). In achieving its aims, it was not unreasonable for Congress to rely upon state and local officials to determine the needs of the local communities. Nor was it unreasonable for Congress to permit the substitution of state for federal rent control when an adequate state statute was enacted.

Integration of federal, state and local authority to bring about a gradual and orderly change from emergency controls to peacetime needs may, perhaps, lack precise precedent. But, as this Court has noted in another connection, "The degree of accommodation made by Congress from time to time in the relations between federal and state governments has varied with the subject matter of the legislation, the history behind the particular field of regulation, the specific terms in which the new regulatory legislation has been cast, and the procedures established for its administration" (*Kirschbaum Co.* v. *Walling*, 316 U. S. 517, 520-521).

The method of accommodation chosen by Congress in relinquishing rent control to states was a

reasonable solution to the practical and constitutional problem of how to terminate the emergency controls without undue injury to the citizens protected by them. As such, it cannot be unconstitutional.[7]

II

Section 204(j) Is Separable from the Remainder of the Housing and Rent Act

After holding that Section 204(j) was invalid, the court below considered the question whether the unconstitutionality of Section 204(j) invalidated the entire Act. The determination of that question, the court below said, rested upon a construction of the savings clause, and that in turn depended upon the intention of Congress as expressed in the preamble of the Act and the debates of Congress. Upon reviewing the preamble of the Act and the debates of Congress, the court below concluded

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[7] The court below implied that Section 204(j) was invalid because its effect would be to impede or prevent uniform application of federal rent control throughout the United States. The short answer to this argument is that "the general operation of the law is uniform although it may result in certain particulars differently in different States". *Hanover National Bank* v. *Moyses*, 186 U. S. 181, 190. "So far as uniformity is concerned, there is no question that the act uniformly applies to the conditions which call its provisions into play—that its provisions apply to all the States, —so that the question really is a complaint as to the want of uniform existence of things to which the act applies and not to an absence of uniformity in the act itself". *Clark Distilling Co.* v. *Western Md. Ry. Co.*, 242 U. S. 311, 326-327. Furthermore the war powers, which are as sweeping as the commerce powers, do not restrict Congress "to the making of uniform rules"; this "would be to impose a limitation which the Constitution does not prescribe." *Currin* v. *Wallace*, 306 U. S. 1, 14.

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that "the Act could never have passed without the local option provisions". For that reason, the court below held that the statute was inseparable from the local decontrol provisions, and that the invalidity of Section 204(j) required the holding that the Act was invalid in its entirety.

The well established rule is that the invalidity of part of a law will not affect the remainder (1) if the valid provisions are capable of being given legal effect standing alone; and (2) if the legislature would have intended them to stand with the invalid provisions stricken out. *Dorchy* v. *Kansas*, 264 U.S. 286, 289-290; *Electric Bond & Share Co.* v. *Securities and Exchange Commission*, 303 U.S. 419.

1. The Housing and Rent Act unquestionably can operate effectively even if Section 204(j) is stricken as invalid. Prior to the amendments in 1949, containing the local decontrol features, the Act contained a complete system of federal rent control and systematic decontrol which was operative throughout the United States. This system had been in effect not only under the Housing and Rent Act of 1947, as amended in 1948, but also since 1942, under the Emergency Price Control Act of 1942, without the aid of the local decontrol features such as are contained in Section 204(j). In addition, both prior to and after the amendment providing for local decontrol by states and municipalities, the statute conferred authority upon the Housing Expediter, acting on his own initiative, to de-

control rents in any area "if in his judgment the need for continuing maximum rents in such area or portion thereof * * * no longer exists" (Sec. 204(c), as amended, or upon recommendation of the local boards (Sec. 204(e) (3), as amended). It was also provided in the amendment of 1949 that the new statute would terminate of its own force on June 30, 1950, unless the President or Congress earlier so proclaims (Sec. 204(f), as amended). These provisions demonstrate not only that the Act can operate without Section 204(j), but also that apart from that section it contains workable provisions with respect to the termination of controls.

2. The intention of Congress that the statute shall be separable if one of its provisions is declared to be invalid is stated in the severability clause contained in Section 303, which reads as follows:

> If any provision[8] of this Act or the application of such provision to any person or circumstances shall be held invalid, the validity of the remainder of the Act, and the applicability of such provisions to other persons or circumstances, shall not be affected thereby.

The effect of such a clause has been accurately

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[8] Referring to the severability provision of Section 305, (changed to Sec. 303 by the Act of 1949), the court below pointed out that Congress used the word "'provision,' not the plural 'provisions'" (84 F. Supp. at p. 665). Under the rules of construction of federal statutes, however, words importing the singular include and apply to several persons, parties, or things (Title 1, U.S.C. Sec. 1).

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described by Chief Justice Hughes in his dissenting opinion in *Carter* v. *Carter Coal Co.*, 298 U.S. 238, 322, and in his opinion for the Court in *Electric Bond & Share Co.* v. *Securities and Exchange Commission*, 303 U. S. 419, 434. In the *Carter* case, he stated (298 U.S. at 322):

> * * * when Congress states that the provisions of the Act are not inseparable and that the invalidity of any provision shall not affect others, we should not hold that the provisions are inseparable unless their nature, by reason of an inextricable tie, demands that conclusion.

In *Electric Bond & Share Co.* v. *Securities and Exchange Commission, supra*, where the question before this Court was the separability of the registration section of the Holding Company Act, the court said with reference to the separability clause (303 U.S. at p. 434):

> This provision reverses the presumption of inseparability[9]—that the legislature intended

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[9] The so-called presumption of inseparability in the absence of a separability clause, first discovered in *Williams* v. *Standard Oil Co.*, 278 U. S. 235, and referred to by way of dictum in a series of cases, the last of which is the *Electric Bond & Share* case, has no rational or historical foundation. Since separability is fundamentally a matter of legislative intention, the presumption can have justification only if it reflects the manner in which Congress and other legislatures customarily operate. It can only be defended on the ground that legislatures avail themselves of separability clauses whenever they desire the provisions of a law to be separable, and fail to use the device only because they have a contrary intention. But to assume as a fact that legislators omit separability clauses because they intend statutes to fall *in toto* is hardly

> the Act to be effective as an entirety or not at all. Congress has established the opposite presumption of divisibility. * * * Congress has thus said that the statute is not an integrated whole, which as such must be sustained or held invalid. On the contrary, when validity is in question, divisibility and not integration is the guiding principle. Invalid parts are to be excised and the remainder enforced. When we are seeking to ascertain the congressional purpose, we must give heed to this explicit declaration.

Sonzinsky v. *United States,* 300 U.S. 506, 512, and *Carmichael* v. *Southern Coal & Coke Co.,* 301 U.S. 495, 513, properly indicate that such a clause is decisive as to legislative intention, and will be effective so long as the invalid provision is not "essential to the operation of the statute" (*ibid.*).

Fruitful analogy on this score may also be found in *Highland Farms Dairy* v. *Agnew,* 300 U. S. 608, which also involved the separability of a termination clause. In that case, the Virginia Milk and Cream Act created a commission with power to establish market areas, to determine, after hearings, the need for regulation of milk and cream

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consistent with common knowledge as to the workings of the legislative process.

Prior to *Williams* v. *Standard Oil Co.*, the approach was precisely the opposite; it was assumed that statutes were to be held separable so that their valid parts could stand unless the opposite was clearly shown. See Cooley, *Constitutional Limitations*, pp. 180-181 (1868) and sixty-three cases cited in the brief for the United States in *United States* v. *Petrillo*, 332 U. S. 1, (1946 Term No. 954, pp. 143-146). This attitude would clearly seem to be the proper one; the courts should attempt to effectuate rather than to thwart legislative policies.

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prices within each area, and if satisfied of the need, to fix prices accordingly. It was claimed, among other things, that the Act was invalid in its application by reason of the provision for the cancellation of the prices established for a market if requested by a majority of the producers and distributors in the area affected. To this contention, this Court declared that "if a provision so subordinate were at any time to fail, the saving clause in Section 16 would cause the residue to stand." (300 U. S. at p. 614).

Clearly, in view of these principles, Section 204(j) is separable from the remainder of the Act. Construed in its setting, Section 204(j) is no more than a subordinate provision in the new Act, providing an additional method of decontrol. Even if integration were the guiding principle when validity was in question, instead of divisibility (cf. *Electric Bond & Share Co.* v. *Securities and Exchange Commission, supra*), Section 204(j) is not so integral a part of the Act as a whole that a declaration of its invalidity requires the entire Act to fall.

The court below took the position that "from all the sources available, including the debates in Congress, the Act could never have passed without the local option provisions" (R. 17). The court placed principal reliance on the preamble to the Act of 1949. But the preamble is to be found in Sections 201(a) and (b) of the Act of 1947, which are carried forth into the Act of 1949 without change. In brief, the preamble declares that it is the purpose of

Congress to terminate federal controls at the earliest practicable date, and that an emergency still exists requiring the continuation of federal controls. Since the preamble was in existence prior to the enactment of the local decontrol provisions of Section 204(j), we fail to see how any inference may be drawn from it respecting the severability of Section 204(j). The court below also noted that no reference is made in the preamble "to a continuation of the war effort," but obviously, "The question of the constitutionality of action taken by Congress does not depend on recitals of the power which it undertakes to exercise" (*Woods* v. *Miller Co.*, 333 U. S. at p. 144).

The legislative history of the 1949 Act, upon which the court also based its conclusion that the Act "could not have passed without the local option provision" does not—apart from the separability clause itself, which passed without discussion—contain any direct reference to the problem of separability. Although the debate indicates that the local decontrol provisions in Section 204(j) were regarded by many members of Congress as important and desirable, 95 Cong. Rec. (Adv. Ed.) 3406, 2982, 2523-2535, 2873-2881, 2981-2986, no member of Congress stated or even implied that the entire Act should fall if those provisions were to be held unconstitutional.

The only statement which even intimates that these provisions were deemed indispensable was that of Senator Maybank, Chairman of the Senate

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Committee, who stated on the floor of the Senate with respect to the bill as reported by the Senate Committee (*id.*, at 2982):

> I wish to point out that I doubt whether we could have reported the bill from the committee if we had not included the provision for State control.

But that is a far cry from a declaration that the committee would not have approved the remainder of the bill if it had known that such a provision could not constitutionally have been included. The bill as reported also contained the separability clause, which expresses a contrary intention.

Analysis of the debates and votes on Section 204(j) indicates that most of the members of Congress who favored the rent legislation opposed the so-called local option provisions, and that, at least in the House, most of those who supported a predecessor to Section 204(j) were opposed to the legislation as a whole.[10] It may or may not be true that sufficient additional votes to pass the bill were ob-

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[10] In the House, the amendment which was the predecessor to Section 204(j) was inserted on the floor by a vote of 227 to 188, 95 Cong. Rec. (Adv. Ed.) 2544. The bill ultimately was approved by the House by a vote of 263 to 143 (*id.*, at 3407). Out of the 263 voting in favor of the bill, 170 had opposed the amendment, 87 had voted for the amendment, and 6 had not voted on the amendment. 128 out of the 227 who voted for the amendment opposed the bill. In the Senate, the vote in favor of the precursor to the present Section 204(j)(3) was 45 to 35 (*id.* at 2986). The final vote in favor of the bill was 78 to 11 (*id.*, at 3445). 34 of the 78 had approved the amendment, 33 had opposed it and 11 had not voted on it.

tained because Section 204(j) was in it. The fact that a certain number of members of Congress may have voted in favor of Section 204(j) when it was first proposed as an amendment to the bill does not prove, of course, that all of them would have voted against the bill as a whole if that section had been lacking.

We mention these factors only to indicate how unsatisfactory they are as guides to legislative intent on severability. The most that can be said in favor of respondent's position is that a number of members of Congress who voted to pass the bill might not have done so without Section 204(j), and that this group combined with those who had opposed Section 204(j) but favored the bill, were necessary to constitute a majority. But query as to whether the intention of Congress is expressed by a majority of those who approve enactment of a bill, or by a minority of those who vote for a bill combined with those who vote against it when the latter combination constitutes a majority. Certainly, in the absence of any express and authoritative statements showing an intention that the Act fall if Section 204(j) is held invalid, such a state of legislative opinion is not adequate basis for disregarding the explicit declaration of legislative intent in the separability clause.[11]

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[11] We do not mean to suggest that such a statement would overcome the separability clause, but only that it would be at least a minimum requirement.

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It is to be observed that the test is whether Congress would intend the statute to fall completely if a particular part is invalidated, not whether Congress would in the first instance have passed the statute without the allegedly unconstitutional provision. This is vividly demonstrated by *Kay* v. *United States,* 303 U. S. 1, 8, in which this Court held severable a provision of the Home Owners Loan Act of 1933 making it a criminal offense to solicit or accept fees from persons applying for loans. Obviously this provision would not have been enacted all by itself, for there would have been nothing to which it could have applied.[12] Equally clearly, Congress would have intended the provision to stand independently once the statute was enacted, as a means of preventing misapplication of the public funds and protecting applicants for loans, even if the substantive provisions of the statute were held invalid.[13] The *Electric Bond & Share* case, 303 U. S. 419, may well be subject to the same analysis. Congress might not have enacted the registration provisions of the Utility Holding Company Act by themselves, though it

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[12] This was conceded by the Government in its brief in the *Kay* case, pp. 52-53.

[13] The differentiation between the intention of Congress to pass valid portions of the statute independently in the first instance and its intention that the latter should stand separately if the remainder of the law were held void was not mentioned in the Court's opinion, which treated the petitioner's separability argument as of little substance, but was argued in the opposing briefs. See brief for the United States, pp. 52-54, petitioner's reply brief, pp. 8-10.

might have intended them to stand by themselves if the other provisions of the statute were held to go beyond constitutional bounds.

III

Other Constitutional Objections Raised by Appellees Are Lacking in Merit

Appellees have made other constitutional objections to the Act which merit only short consideration.

1. *The War Power.* The first is that when the Housing and Rent Act of 1949 was enacted, the "War Emergency" had terminated, and with it the war powers of Congress to legislate respecting rent control. If, by this contention, appellees mean to imply that the exercise of war powers is limited to a period when actual fighting is in progress, the contrary has been established by this Court. *Fleming* v. *Mohawk Wrecking & Lumber Co.,* 331 U. S. 111, 116; *Woods* v. *Miller Co., supra,* 333 U. S. at 141-142. If it is appellees' contention that the housing emergency created by the war no longer exists, the facts on the basis of which Congress acted demonstrated the contrary.

The legislative history of the Act of 1949, "makes abundantly clear that there has not yet been eliminated the deficit in housing which in considerable measure was caused by the heavy demobilization of veterans and by the cessation or reduction in residential construction during the period of hostilities due to the allocation of building materials

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to military projects" (cf. *Woods* v. *Miller Co., supra,* at p. 142). Extensive hearings by Congress disclosed a serious housing shortage arising out of the war and an alarming increase in unlawful evictions, overcharges and black market operations in the rental of housing accommodations.[14] In the Report of the Act of 1949 by the Senate Committee on Banking and Currency, it was pointed out that "the emergency with respect to the housing shortage growing out of the exigencies of World War II still exists, and that it is necessary for a further limited period to continue a program of Federal rent control" (Report of Senate Banking and Currency, No. 127, 81st Cong., 1st Sess., p. 1). The same conclusion was reached by the House Committee on Banking and Currency (Report of House Committee on Banking and Currency, No. 215, 81st Cong., 1st Sess., pp. 1-3). Reference was made in both Senate and House Committee Reports to the significant fact that approximately seven hundred local decontrol boards throughout the country "which are in a better position to determine the actual housing supply and demand situation than any other group, and whose business it is to decontrol defense rental areas if the supply of rental accommodations is adequate, have found relatively few occasions to do so" (Senate Report

[14] See, Testimony of Tighe E. Woods, Housing Expediter, Hearings before Subcommittees of the Senate Banking and Currency Committee on S. 434, S. 600 and S. 888, 81st Cong., 1st Sess., at pp. 31-38; Hearings before the House Banking and Currency Committee on H.R. 198, etc., 81st Cong., 1st Sess., pp. 36-48.

No. 127, *supra*, p. 3; House Report No. 215, *supra*, p. 2). Moreover, both reports observed that although the Expediter had made surveys in more than nine hundred counties throughout the United States, he had "been able to take only thirty-one decontrol actions" (Senate Report, p. 3; House Report, p. 2).

The Committee Reports and the history of the statute on a whole demonstrate clearly that Congress was fully conscious both of the continuation of the housing emergency in many parts of the country and of the need for relinquishing the wartime controls and turning the subject back to the states as promptly as possible. Section 204(j), which appellees are assailing because it does transfer rent control to the states in some measure, is the principal manifestation in the statute of this recognition by Congress that the war emergency was drawing to a close. It is anomalous for appellees both to challenge the statute as a proper exercise of the war powers and at the same time to base their principal attack on the ground that it was unlawful for Congress to relinquish its control to the states in Section 204(j).

2. *Delegation to the Housing Expediter.* Respondents also claim that Congress improperly delegated legislative power to the Housing Expediter. The powers conferred by the Act of 1949 upon the Expediter are not substantially different than those provided by the Act of 1947. Overrul-

ing the objection that delegation under the Act was unlawful, this Court, in *Woods* v. *Miller Co., supra,* declared that "the powers thus delegated are far less extensive than those sustained in *Bowles* v. *Willingham, supra* [321 U. S. 503], pp. 512-515" (333 U.S. at p. 144). The same answer is no less appropriate to the objection made here.

3. *Due Process.* Appellees argue that the Act constitutes a taking of property without due process of law and without just compensation. The contrary has been established in *Woods* v. *Miller Co.,* and *Bowles* v. *Willingham, supra.* Contrary to appellees' contention, owners of property are not obliged to rent their property against their will. Like Section 4(d) of the Act of 1942, the Act of 1949 expressly declares that "Nothing in this Act * * * shall be construed to require any person to offer any housing accommodations for rent" (Sec. 302). Construing Section 4(d) of the 1942 Act in the face of a similar contention, this Court said in *Bowles* v. *Willingham, supra,* 321 U.S. at p. 517:

> We are not dealing here with a situation which involves a "taking" of property. *Wilson* v. *Brown, supra.* By Section 4(d) of the Act it is provided that "nothing in this Act shall be construed to require any person to sell any commodity or to offer any accommodations for rent." There is no requirement that the apartments in question be used for purposes which bring them under the Act.

See, too, *Woods* v. *Durr*, 176 F. 2d 273 (C.A. 3).

4. *Reasonable rate of compensation.* Appellees also complain that the 1949 Act deprives them of property without due process because it fails to provide a means whereby an owner may "receive a reasonable rate of compensation for the use of his property." A similar contention was disposed of as untenable in *Bowles* v. *Willingham, supra*, 321 U.S. at pp. 517-518; see, too, *Woods* v. *Miller Co., supra*, 333 U.S. at p. 146.

The fact is, moreover, that the Act, as amended in 1949, unlike prior Acts, expressly provides that in making adjustments, the Housing Expediter and local boards "shall observe the principle of maintaining maximum rents for controlled housing accommodations, so far as is practicable, at levels which will yield to landlords a fair net operating income from such housing accommodations" (Sec. 204(b)). The Act likewise requires due consideration to be given to relevant factors which are expressly set forth in determining whether the maximum rent for the housing accommodations yields a fair net operating income.[15] Thus, this Act goes

[15] Section 204(b) of the 1949 Act provides in part: "In determining whether the maximum rent for controlled housing accommodations yields a fair net operating income from such housing accommodations, due consideration shall be given to the following, among other relevant factors: (A) Increases in property taxes; (B) unavoidable increases in operating and maintenance expenses; (C) major capital improvement of the housing accommodations as distinguished from ordinary repair, replacement, and maintenance; (D) increases or decreases in living space, services, furniture, furnishings, or equipment; and (E) substantial deterioration

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much further in protecting landlords than either the Acts of 1942 or 1947, which were sustained as valid in the *Willingham* and *Miller* cases.

5. *Alleged absence of judicial review.* There is likewise no merit to appellee's contention that the Act violates the Fifth Amendment in failing to provide a person aggrieved by action of the Expediter the right of judicial review. There is no restriction in the Act against judicial review,[16] and there is nothing in the legislative history suggesting that Congress intended to bar persons aggrieved by the impact of the Act or regulations from resort to the courts for relief (cf. *Stark* v. *Wickard,* 321 U. S. 288, 307-308; *Switchmen's Union* v. *Mediation Board,* 320 U. S. 297, 301; *Estep* v. *United States,* 327 U. S. 114, 120). That being so, the existence of general federal jurisdiction would appear to be present here for protecting individual rights from administrative rulings beyond the limit of statutory authority, *Stark* v. *Wickard, supra,* pp. 309-310; Administrative Procedure Act, Section 10, 5 U. S. C. § 1009. In accord with these principles, the Expediter has con-

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of the housing accommodations, other than ordinary wear and tear, or failure to perform ordinary repair, replacement, or maintenance." Pursuant to these provisions, the Expediter has issued the Rent Regulation for Housing, 14 F. R. 5711, which includes these factors in determining fair net operating income for purposes of upward adjustments in rents.

[16] Section 204(e) of the Act provides only for review by the Emergency Court of Appeals of dispositions by local boards respecting removal of maximum rents and general adjustments.

sistently taken the view that landlords complaining of the effect of the Act have the right to judicial review. In no instance has any court refused to accept jurisdiction in such cases on the ground that the Act did not confer it.

6. *Use of Confidential Information.* Nor is due process violated to the extent that the Expediter is authorized by Section 206(g) of the Act to refuse to publish or disclose information which he "deems confidential or with reference to which a request for confidential treatment is made by the person furnishing such information unless he determines that the withholding thereof is contrary to the public interest." A similar provision was contained in the 1942 Act (Sec. 202(h), 50 U. S. C. App. 922(h)). Obviously, this is a reasonable means of protecting tenants from reprisal on the part of landlords, where information has been provided with respect to overcharges or other violation. The landlord suffers no legal harm where this information is withheld from him, since he was not entitled under law to it in the first instance. In no event does the landlord sustain any liability because of this information until after trial at which, of course, he will have opportunity to hear and meet the evidence against him. If the point of this objection is that the Expediter may thereby enter an order or regulations fixing rents without consulting landlords or providing them with a hearing, it is also wanting in merit since no such requirement

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is imposed by law (see, *Bowles* v. *Willingham, supra,* 321 U. S. at pp. 519-520).

7. *Alleged arbitrary classification.* This Court's ruling in *Woods* v. *Miller, Co., supra,* is likewise dispositive of respondents' argument that the Act creates arbitrary classifications contrary to the Fifth Amendment. As this Court said (333 U. S. at p. 145):

> Objection is made that the Act by its exemption of certain classes of housing accommodations violates the Fifth Amendment. * * * It [Congress] need not control all rents or none. It can select those areas or those classes of property where the need seems the greatest. See *Barclay & Co.* v. *Edwards,* 267 U. S. 442, 450. This alone is adequate answer to the objection, equally applicable to the original Act sustained in *Bowles* v. *Willingham, supra,* that the present Act lacks uniformity in application.

See, too, *Bowles* v. *Willingham, supra,* 321 U. S. at p. 518.

IV

The Case Is Not Moot

Although we do not believe the case to be moot, we think the following facts bearing on mootness should be brought to the attention of the Court.

Since this case was docketed, appellees have filed with the Area Rent Office in Chicago petitions for eviction of tenants in the building here involved,

alleging that they presently have the 65% tenant participation required by the Rent Regulation. Eviction certificates have not been issued because the tenants have stated that by November 27, 1949 they will file objections to the petitions, in which they will assert that the landlord has not met the requirements of the Regulation. In due course it may be necessary to hold hearings to determine whether "removals or evictions of the character proposed are not inconsistent with the purposes of the act or this regulation and would not be likely to result in the circumvention or evasion thereof." (Regulation, § 825.6(c), 14 Fed. Reg. 5719.)

The backlog of cases in the Chicago Office is such that no decision is likely to be reached on the appellees' petitions until near the end of December. Whether eviction certificates will be granted by the Chicago Office cannot, of course, be foretold. Whichever way that Office decides the case, an appeal may be taken to the Housing Expediter in Washington. Rent Procedural Regulation No. 2, § 840.113, 14 Fed. Reg. 5273. Counsel for the tenants have advised the Office in Chicago that they intend to appeal if the decision in Chicago is adverse. The Regulation provides for a stay of eviction pending appeal. *Id.* Sec. 840.121, 14 Fed. Reg. 5275. Under the Regulation, the appellant has 20 days after issuance of the order to be reviewed in which to file an appeal (§ 840.115, 14 Fed. Reg. 5273) and the appellee 15 days to file his re-

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sponse (§ 840.122, 14 Fed. Reg. 5275). The backlog of cases in Washington is such that no decision could be rendered by the Expediter until approximately two months after the appeal papers reach Washington.

In view of the above facts, we think it clear that the case has not become moot by reason of appellees' present claim that 65% of the tenants in occupancy have now joined the cooperative. If the statute is constitutional, appellees will be unable to evict tenants for a number of months at the earliest, assuming that they establish their claim. If the statute is unconstitutional, they are entitled to evict the tenants immediately.

Furthermore, apart from the above, an injunction would be effective as against the individual appellees who organized the cooperative to prevent them from violating the statute on other properties. The cessation of violations on the particular property would not bar injunctive relief generally. Cf. *Hecht Co.* v. *Bowles,* 321 U. S. 321, 327; *Porter* v. *Lee,* 328 U. S. 246, 251-252; *Consolidated Edison Co.* v. *Labor Board,* 305 U. S. 197, 230; *Federal Trade Commission* v. *Goodyear Tire Co.,* 304 U. S. 257, 260.

There is also a public interest in not having the case held moot. Although some judges have rejected the reasoning of the court below in this case, no enforcement can be obtained in 29 cases pending before Judge Shaw as of October 28, 1949,

unless and until this Court holds the Act constitutional.[17] In addition, in a large number of other cases, other judges throughout the country are awaiting this Court's decision before they enforce the Act.

CONCLUSION

The judgment below should be reversed and the cause remanded to the District Court for further proceedings.

Respectfully submitted,

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[17] One other Chicago district judge is refusing to hold final hearings in any of the 30 Rent Act cases pending before him, although he has granted temporary injunctions in some cases. Numerous additional cases, of course, are being filed each month, and these are assigned by lot to the various district judges in Chicago.

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